

**Effective 5/10/2016**

**31A-33-106 Board of directors -- Status of the fund in relationship to the state.**

- (1) There is created a board of directors of the Workers' Compensation Fund.
- (2) Except as provided in Subsection (18), the board shall consist of seven directors.
- (3) One director shall be the chief executive officer of the fund.
- (4)
  - (a) In accordance with a plan that meets the requirements of this section and the fund's articles of incorporation and bylaws, the board shall nominate and the policyholders shall elect six public directors as follows:
    - (i) four directors who are owners, officers, directors, or employees of policyholders, each of whom is an owner, officer, or employee of a policyholder that has been insured by the Workers' Compensation Fund for at least one year before the election of the director representing the policyholder; and
    - (ii) two directors from the public in general.
  - (b) The plan described in Subsection (4)(a) shall comply with Section 31A-5-409 to the extent that Section 31A-5-409 does not conflict with this section.
- (5) No two directors may represent or be employed by the same policyholder.
- (6) At least five directors elected by the policyholders shall have had previous experience in:
  - (a) the actuarial profession;
  - (b) accounting;
  - (c) investments;
  - (d) risk management;
  - (e) occupational safety;
  - (f) casualty insurance; or
  - (g) the legal profession.
- (7) A director who represents a policyholder that fails to maintain workers' compensation insurance through the Workers' Compensation Fund shall immediately resign from the board.
- (8) A person may not be a director if that person:
  - (a) has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier providing workers' compensation insurance;
  - (b) fails to meet or comply with the conflict of interest policies established by the board; or
  - (c) is not bondable.
- (9) After notice and a hearing, the board may remove any director for cause which includes:
  - (a) neglect of duty; or
  - (b) malfeasance.
- (10)
  - (a) Except as required by Subsection (10)(b), the term of office of the directors elected by the policyholders shall be four years, beginning July 1 of the year of election.
  - (b) Notwithstanding the requirements of Subsection (10)(a), the board shall, at the time of election or reelection, adjust the length of terms to ensure that no more than two terms expire in a calendar year.
- (11) A director shall hold office until the director's successor is selected and qualified.
- (12) When a vacancy occurs in the membership of the board for any reason, the replacement shall be appointed by a majority of the board for the unexpired term, after which time the replacement shall stand for policyholder election as described in the fund's articles of incorporation and bylaws.
- (13) The board shall annually elect a chair and other officers as needed from its membership.
- (14)

- (a) The board shall meet at least quarterly at a time and place designated by the chair.
- (b) The chair:
  - (i) may call board meetings more frequently than quarterly; and
  - (ii) shall call additional board meetings if requested to do so by a majority of the board.
- (15) Except as provided in Subsection (18), four directors are a quorum for the purpose of transacting all business of the board.
- (16) Except as provided in Subsection (18), a decision of the board requires the affirmative vote of at least four directors for approval.
- (17)
  - (a) A director may receive compensation and be reimbursed for reasonable expenses incurred in the performance of the director's official duties:
    - (i) as determined by the board of directors; and
    - (ii) in an amount not to exceed the reasonable market rate for directors of similarly situated insurance carriers.
  - (b) Directors may decline to receive compensation and expenses for their service.
  - (c) The Worker's Compensation Fund shall pay compensation to and reimburse reasonable expenses of directors as permitted by this section:
    - (i) from the Injury Fund; and
    - (ii) upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal operating expenses.
  - (d) The chief executive officer of the Workers' Compensation Fund shall serve on the board without payment of compensation, but may be reimbursed for reasonable expenses in accordance with Subsection (17)(a).
  - (e) The Workers' Compensation Fund shall annually report to the commissioner compensation and expenses paid to the directors on the board.
- (18)
  - (a) In accordance with this Subsection (18), the board may increase the number of directors on the board by one or two directors, except the board may not exceed a total of nine directors.
  - (b) The board may increase the number of directors if:
    - (i) the board determines by unanimous vote, that the business needs of the Workers' Compensation Fund would be best served by the expansion;
    - (ii) the majority of the total number of directors after the increase are policyholders of the Workers' Compensation Fund;
    - (iii) an added director has experience described in Subsection (6);
    - (iv) the term of an additional director is compliant with Subsection (10), except that if the board is increased to nine directors, at the time of election or reelection, the board shall adjust the length of terms to ensure that no more than three terms expire in a calendar year;
    - (v) at least one of the two additional directors is nominated and elected by the policyholders of the Workers' Compensation Fund subject to the requirements of:
      - (A) this section; and
      - (B) the Workers' Compensation Fund's articles of incorporation and bylaws; and
    - (vi) one of the two additional directors is not elected in accordance with Subsection (18)(b)(v), the director shall be selected subject to the requirements of:
      - (A) this section; and
      - (B) the Workers' Compensation Fund's articles of incorporation and bylaws.
  - (c) If the board is increased to nine directors:
    - (i) five directors are a quorum for the purpose of transacting all business of the board; and
    - (ii) a decision of the board requires the affirmative vote of at least five directors for approval.

- (19) The placement of this chapter in this title does not:
- (a) remove from the board of directors the managerial, financial, or operational control of the Workers' Compensation Fund;
  - (b) give to the state or the governor managerial, financial, or operational control of the Workers' Compensation Fund;
  - (c) consistent with Section 31A-33-105, cause the state to be liable for any:
    - (i) obligation of the Workers' Compensation Fund; or
    - (ii) expense, liability, or debt described in Section 31A-33-105;
  - (d) alter the legal status of the Workers' Compensation Fund as:
    - (i) a nonprofit, self-supporting, quasi-public corporation; and
    - (ii) an insurer:
      - (A) regulated under this title;
      - (B) that is structured to operate in perpetuity; and
      - (C) domiciled in the state; or
  - (e) alter the requirement that the Workers' Compensation Fund provide workers' compensation:
    - (i) for the purposes set forth in Section 31A-33-102;
    - (ii) consistent with Section 34A-2-201; and
    - (iii) as provided in Section 31A-22-1001.

Amended by Chapter 110, 2016 General Session

Amended by Chapter 348, 2016 General Session